

(C) *Review of amended and new H-1B petitions for foreign medical graduates granted waivers under Pub. L. 103-416 and who seek to have early termination of employment excused due to extenuating circumstances.*—(1)

*Amended H-1B petitions.* The waiver granted under Pub. L. 103-416 may be affirmed, and the amended H-1B petition may be approved, if the petitioning health care facility establishes that the foreign medical graduate otherwise remains eligible for H-1B classification and that he or she will continue practicing medicine in an HHS-designated shortage area.

(2) *New H-1B petitions.* The Service shall review a new H-1B petition filed on behalf of a foreign medical graduate who has not yet fulfilled the required 3-year period of employment with the health care facility named in the waiver application and in the original H-1B petition to determine whether extenuating circumstances exist which warrant a change in employment, and whether the waiver granted under Pub. L. 103-416 should be affirmed. In conducting such a review, the Service shall determine whether the foreign medical graduate will continue practicing medicine in an HHS-designated shortage area, and whether the new H-1B petitioner and the foreign medical graduate have satisfied the remaining H-1B eligibility criteria described under section 101(a)(15)(H) of the Act and § 214.2(h) of this chapter. If these criteria have been satisfied, the waiver granted to the foreign medical graduate under Pub. L. 103-416 may be affirmed, and the new H-1B petition may be approved in the exercise of discretion, thereby permitting the foreign medical graduate to serve the balance of the requisite 3-year employment period at the health care facility named in the new H-1B petition.

(D) *Failure to notify the Service of any material changes in employment.*

Foreign medical graduates who have been granted a waiver of the 2-year requirement and who have obtained H-1B status under Pub. L. 103-416 but fail to: Properly notify the Service of any material change in the terms and conditions of their H-1B employment, by having their employer file an amended or a new H-1B petition in accordance with this section and § 214.2(h) of this chapter; or establish continued eligibility for the waiver and H-1B status, shall (together with their dependents) again become subject to the 2-year requirement. Such foreign medical graduates and their accompanying H-4 dependents also

become subject to deportation under section 241(a)(1)(C)(i) of the Act.

\* \* \* \* \*

#### **PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE**

3. The authority citation for part 245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; and 8 CFR part 2.

##### **§ 245.1 [Amended]**

4. In § 245.1, paragraph (c)(2) is amended by removing the “;” at the end of the paragraph and replacing it with a “.”; and by adding a new sentence at the end of paragraph (c)(2) to read as follows:

##### **§ 245.1 Eligibility.**

\* \* \* \* \*

(c) \* \* \*  
(2) \* \* \* An alien who has been granted a waiver under section 212(e)(iii) of the Act based on a request by a State Department of Health (or its equivalent) under Pub. L. 103-416 shall be ineligible to apply for adjustment of status under section 245 of the Act if the terms and conditions specified in section 214(k) of the Act and § 212.7(c)(9) of this chapter have not been met;

\* \* \* \* \*

#### **PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION**

5. The authority citation for part 248 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

6. In § 248.2, paragraph (c) is amended by removing the “; and” at the end of the paragraph and replacing it with a “.”; and by adding two new sentences at the end of paragraph (c) to read as follows:

##### **§ 248.2 Ineligible classes.**

\* \* \* \* \*

(c) \* \* \* This restriction shall not apply when the alien is a foreign medical graduate who was granted a waiver under section 212(e)(iii) of the Act pursuant to a request made by a State Department of Public Health (or its equivalent) under Pub. L. 103-416, and the alien complies with the terms and conditions imposed on the waiver under section 214(k) of the Act and the implementing regulations at § 212.7(c)(9) of this chapter. A foreign medical graduate who was granted a waiver under Pub. L. 103-416 and who does not fulfill the requisite 3-year employment contract or otherwise

comply with the terms and conditions imposed on the waiver is ineligible to apply for change of status to any other nonimmigrant classification; and

\* \* \* \* \*

Dated: April 25, 1995.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 95-NM-82-AD; Amendment 39-9234; AD 95-10-17]

#### **Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Lockheed Model L-1011-385 series airplanes. This action requires inspections to detect cracking or severing of the fuselage frames, and an additional inspection or repair, if necessary. This amendment is prompted by reports indicating that fatigue cracking was found on certain fuselage frames on these airplanes. The actions specified in this AD are intended to prevent reduced structural integrity of the fuselage shell due to the problems associated with fatigue cracking.

**DATES:** Effective May 23, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 17, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-82-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2-160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE-116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7367; fax (404) 305-7348.

**SUPPLEMENTARY INFORMATION:** The FAA has recently received six reports indicating that cracking was found on certain fuselage frames on Lockheed Model L-1011-385 series airplanes. This cracking occurred at the location where the outer flange of the frame attaches to the water line (WL) 280.6 longeron (the upper stringerless sidewall longeron) on the left- and right-hand sides of the airplane. Such cracking also has been found in multiple frames of a single airplane. On one airplane, two adjacent frames were severed completely; cracks were found in three more adjacent frames on this same airplane. In each of the cracked frames, the cracks emanated from the fastener hole that attaches the frame to the WL 280.6 longeron at the shear slip cutout.

The cracking appears to be fatigue related, primarily as a result of pressurization loads. An engineering analysis indicates that this cracking initiates when the airplane has accumulated between 20,000 and 25,000 total landings. Loads analysis and testing performed during its original certification shows that this airplane model can retain fail-safe load capability with a skin crack extending across two skin bays and one frame severed completely. (To date, no skin cracking has been reported.) Subsequent engineering analysis confirms that the airplane is capable of limit pressurization and fuselage bending loads with two adjacent frames severed completely.

Fatigue cracking in the fuselage frames, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage shell.

The FAA has reviewed and approved Lockheed Alert Service Bulletin 093-53-A271, dated April 25, 1995, including Attachments 1 and 2, which describes procedures for either an external X-ray inspection, or both an

internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames; and an inspection (using either an eddy current surface scan or a magneto-optic imager) of the adjacent frames and external skin, or repair, if necessary. The alert service bulletin specifies that, for certain airplanes, the inspection area is located between fuselage station (FS) 589 to FS 749 (for the C1 door) and FS 509 to FS 749 (for the C1A door) on the right-hand side of the airplane. (For airplanes on which any cracking or severing is found in the fuselage frames, the alert service bulletin describes procedures for an additional inspection of the fuselage frames between FS 1605 to FS 1745 on the left- and right-hand sides of the airplane.) For certain other airplanes, the alert service bulletin indicates that the inspection area includes all fuselage frames where the frame outer flange attaches to the WL 280.6 longeron (upper stringerless sidewall longeron) on both the left- and right-hand sides of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other Lockheed Model L-1011-385 series airplanes of the same type design, this AD is being issued to prevent reduced structural integrity of the fuselage shell. This AD requires either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames; and an inspection (using either an eddy current surface scan or a magneto-optic imager) of the adjacent frames and external skin, or repair, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

The required compliance time of 120 days for certain airplanes [reference paragraph (b) of this AD] is usually sufficient to allow for a brief comment period before adoption of a final rule. In this AD, however, the compliance time of 120 days for airplanes that have accumulated 20,000 total landings, but less than 25,000 total landings, was established based on inspections to date of airplanes in this category along with an engineering evaluation of frame crack propagation rates. The FAA established that compliance time in order to provide an acceptable level of safety commensurate with the compliance time of 25 days for airplanes that have accumulated 25,000 or more total landings. In addition, the FAA selected

the 120-day compliance time because of a potential short-term problem with availability of sufficient parts for repairing a fuselage frame if any defect is found; a shorter compliance time might have resulted in the unnecessary removal of airplanes from service pending delivery of repair parts. Nevertheless, the FAA has determined that immediate adoption is necessary in this case because of the importance of initiating the required inspections as soon as possible.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this rule to clarify this long-standing requirement.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-82-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**95-10-17 Lockheed Aeronautical Systems Company:** Amendment 39-9234. Docket 95-NM-82-AD.

**Applicability:** All Model L-1011-385 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage shell due to fatigue cracking of the fuselage frames, accomplish the following:

(a) Prior to the accumulation of 25,000 total landings, or within 25 days after the effective date of this AD, whichever occurs later: Perform either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames at all fuselage frames where the frame outer flange attaches to the water line (WL) 280.6 longeron (upper stringerless sidewall longeron) on both the left- and right-hand sides of the airplane, in accordance with Lockheed Alert Service Bulletin 093-53-A271, dated April 25, 1995, including Attachments 1 and 2.

(1) If no cracking or severing is found, no further action is required by paragraph (a) of this AD.

(2) If any cracking or severing is found, prior to further flight, perform an inspection (using either an eddy current surface scan or a magneto-optic imager) to detect cracking of the adjacent frames and external skin, in accordance with the alert service bulletin. Prior to further flight, repair any cracking or severing found during any inspection required by paragraph (a) of this AD, in accordance with the alert service bulletin.

(b) Except as provided by paragraph (c) of this AD, prior to the accumulation of 20,000

total landings, or within 120 days after the effective date of this AD, whichever occurs later: Perform either an external X-ray inspection, or both an internal close visual and an eddy current inspection, to detect cracking or severing of the fuselage frames between fuselage stations (FS) 589 to FS 749 (for the C1 door) and between FS 509 to FS 749 (for the C1A door) on the right-hand side of the airplane, in accordance with Lockheed Alert Service Bulletin 093-53-A271, dated April 25, 1995, including Attachments 1 and 2. If any cracking or severing is found, prior to further flight, perform an inspection to detect cracking of the fuselage frames at FS 1605 to FS 1745 on the left- and right-hand sides of the airplane, in accordance with the alert service bulletin.

(1) If no cracking is found, no further action is required by paragraph (b) of this AD.

(2) If any cracking is found, prior to further flight, perform an inspection (using either an eddy current surface scan or a magneto-optic imager) to detect cracking of the adjacent frames and external skin, in accordance with the alert service bulletin. Prior to further flight, repair any cracking or severing found during any inspection required by paragraph (b) of this AD, in accordance with the alert service bulletin.

(c) Airplanes on which the inspection required by paragraph (a) of this AD is performed within the compliance time specified in paragraph (b) of this AD are not required to accomplish the inspection required by paragraph (b).

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repair shall be done in accordance with Lockheed Alert Service Bulletin 093-53-A271, dated April 25, 1995, including Attachments 1 and 2. (NOTE: Attachment 1 is undated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2-160, College Park, Georgia; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 23, 1995.

Issued in Renton, Washington, on May 10, 1995.

**James V. Devany,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## Coast Guard

### 33 CFR Part 117

[CGD02-95-001]

RIN 2115-AE47

### Drawbridge Operation Regulation; Illinois Waterway

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is finalizing operation conditions for the remote operation of the Elgin, Joliet and Eastern Railway (EJ&E) Bridge over the Illinois Waterway at mile 290.1, at Lockport, Illinois. This action was taken at the request of the Elgin, Joliet and Eastern Railway Company. The change to remote operation permits more efficient operation of the railway bridge, while continuing to provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** May 18, 1995.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the offices of the Commander, Second Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103-2832, Attention: Bridge Administrator, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539-3724.

#### SUPPLEMENTARY INFORMATION:

##### Drafting Information

The principal persons involved in drafting this document are David H. Sulouff, Project Officer, Bridge Branch and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

##### Regulatory History

On September 1, 1994, the Coast Guard published a proposed rule (59 FR 45252) concerning this amendment. The Commander, Second Coast Guard District, also published the proposal as a Public Notice dated September 20,

1994. Interested parties were given until October 31, 1994 to submit comments. The Coast Guard received comments from the Illinois Department of Conservation and the Illinois River Carriers Association, representing approximately 34 river towing companies. On February 24, 1995, the Coast Guard published an interim rule (60 FR 10315) concerning this amendment with a comment closing date of April 25, 1995. No comments were received in response to this interim rule. A public hearing was not requested and one was not held.

Two minor changes have been made to the final rule from the interim rule. The interim final rule stated that the remote operator made marine broadcasts warning of the drawbridges closure on channel 16. In this final rule, reference to channel 16 was eliminated because the marine broadcast frequencies are designated by FCC regulations and not by the Coast Guard. This final rule also increases the number of broadcasts that the remote operator will make after the drawspan is lowered and locked in the closed to navigation position, from two broadcasts to periodic broadcasts. This change will ensure that vessels approaching the bridge after the drawspan has been lowered will be notified that the draw is closed.

Good cause exists for making this rule effective upon publication. No comments were received during the interim final rule's 60 day comment period. The Coast Guard has monitored the remote operation during the 60 day test period. There were no equipment failures and no reported negative impacts to navigation. This rule allows the bridge to be left open unless rail traffic or maintenance requires its closure. Vessel traffic will benefit from this rule by having the bridge maintained in the open to navigation position. For these reasons the Coast Guard has determined that there is no need to delay implementation of this rule.

##### Background and Purpose

The Elgin, Joliet and Eastern Railway requested approval from the Coast Guard to change the operation of the EJ&E Bridge over the Illinois waterway at mile 290.1, at Lockport, Illinois, from on-site bridge operation to a remote operating system. This rule change establishes remote operating procedures with associated operating and equipment requirements on EJ&E that will ensure the safe and timely operation of the railroad drawspan.

EJ&E has installed remote operating equipment and a control system, including radar, infrared boat detectors,

motion detectors and communications equipment, to facilitate operation of the drawspan from Gary, Indiana. The drawspan can also be operated at the bridge site. The drawspan will be maintained in the open to navigation position except for the passage of rail traffic or maintenance. The equipment indicates any malfunction in the drawspan operation and allows the remote operator to ascertain the position of the drawspan at any time. The marine radio system allows communication between the remote operator and marine traffic at the bridge, on the VHF marine frequencies authorized by the Federal Communications Commission. A radar antenna has been installed on the bridge and the received signal is transmitted by fixed lines to the remote operator. The radar system is designed to scan upstream and downstream of the bridge. Infrared scanners and motion detectors are located in the channel drawspan to detect vessels under the drawspan. If an obstruction is detected beneath the drawspan during the closing cycle, before the drawspan is seated and locked, the drawspan will automatically stop lowering and shall be raised to the fully open position by the remote operator until the channel is clear. Once lowered and locked in the closed to navigation position, the boat detectors will not raise the drawspan.

During the drawspan closing cycle, the bridge operator shall make a radio broadcast indicating drawspan status. At the appropriate times in the cycle, the bridge operator shall announce that the drawspan will close to navigation, that the drawspan is closed to navigation, or that the drawspan has reopened to navigation.

##### Regulatory Evaluation

This rule is not a significant regulatory action under 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

##### Small Entities

After considering comments received, the Coast Guard finds that any impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under 605(b) of the Regulatory